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Attorney for Numerous Wild Fire Claimants

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

- and -

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOF OF CLAIM
BY EILEEN KING AND JASON KING,
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
GUY L. WATTS**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Date: July 7, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor

Objection Deadline: June 23, 2020

TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
PARTIES:

Watts Guerra LLP, together with several other firms, represent thousands of victims of the

1 Fires started by PG&E in 2017 (generally referred to as the “North Bay Fires”) and 2018 (“Camp
2 Fire”) and 2019 (“Kincade Fire”).

3 Watts Guerra LLP respectfully files this motion on behalf of Eileen King and Jason
4 King, (collectively, “Movants”) to deem timely late filing of proofs of claims (“Motion”).

5 **I. SUMMARY OF ARGUMENT**

6 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
7 prejudice. In this case, due to a variety of stressors arising from the CAMP Fire, Movants were
8 unable to timely file their proofs of claims. Because there is no danger of prejudice to the Debtors
9 as Debtors’ estates are solvent, and all creditors stand to be paid, the Motion should be granted to
10 allow these survivors to have their claims deemed timely. This Court must determine whether to
11 grant the Motion.

12 **II. FACTUAL BACKGROUND**

13 **A. Movants’ Claims Arising From Tubbs Fire¹**

14 Creditors Eileen King and Jason King are survivors of the CAMP Fire that occurred in
15 2018. On October 3, 2019, Eileen King contacted our Chico office inquiring about the process to
16 submit a claim. The representative confirmed via email on October 3, 2019 the process for Mrs.
17 King to access and sign a contract to move forward as a client. The representative included in her
18 email the Court ordered CMO5 form for competition as well. On October 4, 2019, Mrs. King
19 returned the completed CMO5s requesting a return call as she still had open questions. Neither
20 Mrs. King nor the representative followed up the October 4, 2019 email exchange. On April 30,
21 2020, Mrs. King emailed the same representative inquiring about follow up to her email of October
22 4, 2019. After a review of all emails, a search of all databases, conversations with Mrs. King, it
23 was determined that both the representative and Mrs. King had failed to follow thru on the last
24 email exchange with Mrs. King thinking the CMO5 was sufficient to move her claim forward. Mrs.
25 King recalls the contract and signing but apparently due to failed issues with either the website or
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28 ¹ See Ex. 1, Declaration of Guy L. Watts.

1 user error, the signed documents were never received by Watts Guerra LLP.

2 On June 10, 2020, Watts Guerra LLP filed claim numbers BYRVK27402
3 and TZXST27402 on behalf of Movants (“Subject Proofs of Claims”). True and correct copies of
4 the Subject Proofs of Claim are collectively attached to the Guy L. Watts Declaration as Exhibit
5 “A”.

6
7 **B. General Procedural Background**

8 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company (“Debtors”
9 or “PG&E”) commenced with the Court voluntary cases (“Chapter 11 Cases”) under chapter 11 of
10 the United States Code (“Bankruptcy Code”). PG&E’s chapter 11 filings were necessitated by a
11 confluence of factors resulting from catastrophic fires that occurred in Northern California prior to
12 the Petition Date, and PG&E’s potential liabilities arising therefrom.

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14 Since, the Debtors continue to operate their businesses and manage their properties as
15 debtors in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108, the Debtors’ Chapter 11 Cases
16 are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the
17 Federal Rules of Bankruptcy Procedure (“FRBP”).

18 **C. Plan, Disclosure Statement, and the Solicitation Procedures Motion**

19 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter 11 Plan
20 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31,
2020.

21 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement for the
22 Amended Plan.

23 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of an Order (I)
24 Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (II)
25 Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving Forms of
26 Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Related Relief (the
27 “Solicitation Procedures Motion”).

28 On March 16, 2020, as Dk. No. 6320, the Debtors filed the Amended Chapter 11 Plan

1 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16,
2 2020.

3 On March 17, 2020, the Solicitations Procedures Motion was approved. Since then, the
4 Disclosure Statement and Plan have been circulated for votes.

5 **D. Extended Bar Date for Fire Victim Creditors**

6 The deadline for filing proofs of claim with respect to any prepetition claim including, but
7 not limited to, all claims of Fire Claimants, Wildfire Subrogation Claimants, Governmental Units
8 and Customers, and for the avoidance of doubt, including all secured claims and priority claims,
9 against either of the Debtors was October 21, 2019 at 5:00 p.m. ("General Bar Date").

10 The deadline for filing claims was extended to December 31, 2019 ("Extended Bar Date"),
11 solely for the benefit of any non-governmental Fire Claimants who did not file Proofs of Claim
12 by the General Bar Date.

13 **III. Legal Argument**

14 In a Chapter 11 case, the time to file a proof of claim may be extended under certain
15 circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1). The bankruptcy
16 court has "broad equitable powers" in a Chapter 11 case with respect to the timing requirement
17 for proofs of claim. *Pioneer Inventory Services v. Brunswick Associates Limited Partnership*, 507
18 U.S. 380, 389 (1993). All in all, Rule 9006(b)(1) allows "late filings caused by inadvertence,
19 mistake, or carelessness, not just those caused by intervening circumstances beyond the party's
20 control." *Id.*, at 381. Even a creditor that did in fact receive notice may file a proof of claim
21 notwithstanding the expiration of a claims bar date in a Chapter 11 case upon a showing of
22 "excusable neglect." *Id.* At 394-95 ("Had respondents here been prevented from complying with
23 the bar date by an act of God or some other circumstance beyond their control, the Bankruptcy
24 Court plainly would have been permitted to find 'excusable neglect' [under FRBP 9006].").

25 In considering whether a creditor's failure was the product of "excusable neglect," the court
26 should take "account of all relevant circumstances surrounding the party's omission," including
27 "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial
28 proceedings, the reason for the delay, including whether it was within the reasonable control of the

1 movant, and whether the movant acted in good faith.” *Id.* at 395; *see also Corning v. Corning (In*
2 *re Zilog, Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant
3 factors). Again, a late-filed proof of claim is allowable where a creditor had actual notice of the
4 bankruptcy but, due to some external reason, failed to file a proof of claim or did not realize that
5 she had to, before the bar date. *See, e.g., ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996,
6 1003-07 (9th Cir. 2006) (applying the *Pioneer* factors). All in all, Rule 9006(b)(1) allows “late
7 filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening
8 circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381. Here, consideration of all four
9 *Pioneer* factors—as well as a fifth engrafted onto the *Pioneer* analysis by some courts—weighs in
10 favor of Movants.
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13 Because in this case there is no danger of prejudice to the Debtors, the first *Pioneer* factor
14 weighs overwhelmingly in Movant’s favor. Debtors’ estates are solvent, and all creditors stand to
15 be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In re*
16 *Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate is
17 solvent, “the proper remedy for a late filing is not the expungement of a claim, but its allowance
18 as a tardily filed claim only.). Secondly, immediately, upon receiving all the necessary
19 information the Subject Proofs of Claims were filed. Thirdly, the delay in filing the Subject
20 Proofs of Claim is reasonable considering the estrangement of Movants and the accompanying
21 stress of relocating after the emotional trauma they experienced as survivors of the Tubbs Fire.
22 Lastly, any prospect of prejudice beyond solvency is unlikely given (a) distributions have not been
23 made; and (b) the value of Movants’ claims relative to the value of Debtors’ estates is low. *See,*
24 *e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim in
25 relation to the estate is a consideration in determining prejudice).

26 **IV. Conclusion**

27 For the reasons set forth above, the Movants respectfully request that this Court enter an
28 order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

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1. Granting the Motion;
2. Finding that Subject Proofs of Claims filed by Movants are to be allowed as having been timely filed;
3. Granting such other or further relief as the Court deems just and proper.

Dated: June 10, 2020.

Respectfully submitted,

WATTS GUERRA LLP

By: /s/ Mikal C. Watts
Mikal C. Watts